



TERMS AND CONDITIONS OF PURCHASE ORDER

1. DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires:

"**Conditions**" means these terms and conditions;

"**Change Order**" means a written amendment by us to the PO on terms mutually agreed by the parties;

"**day**" means the period of time commencing at midnight and ending 24 hours later;

"**Defective Goods**" has the meaning given in GC 5.3;

"**Delivery**" or "**Delivered**" means the delivery of Goods or Services by you to the nominated Delivery Point and acceptance of the Goods or Services by us;

"**Delivery Date**" means the date(s) specified in the Purchase Order Form;

"**Delivery Point**" means the place(s) or site(s) where the Goods and/or Services are to be delivered as specified in the Purchase Order Form;

"**GC**" means a provision of these Conditions;

"**Goods**" means the goods described in the Purchase Order Form;

"**GST**" means the tax payable on Taxable Supplies under the GST Legislation;

"**GST Legislation**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;

"**Intellectual Property Rights**" includes patents, inventions, know-how, processes, designs, databases, copyrights, trademarks, brands, logos, domain names, business names, moral rights and any other intellectual property rights;

"**JV Participants**" means the Port JV Participants and the Rail JV Participants;

"**Participating Interests**" means the respective proportion of interest of a JV Participant from time to time, in the Port JV or the Rail JV (as the case may be), expressed as a percentage, which may be altered in accordance with the relevant joint venture agreement or any novation, replacement or amendment of those agreements;

"**PO**" means the agreement between us consisting of our signed Purchase Order Form for Goods and/or Services, these Conditions and any other documents attached or incorporated by reference as described in our Purchase Order Form;

"**Port JV**" means the unincorporated joint venture known as the "Oakajee Port Joint Venture" established for purposes that include the design, engineering, construction, commissioning and operation of the deepwater port, which, as at the date of the PO, is comprised of Mitsubishi Development Pty Ltd as a 50% Participating Interest and Crosslands Resources Limited as a 50% Participating Interest;

"**Port JV Participants**" means at the date of the PO, Mitsubishi Development Pty Ltd and Crosslands Resources Limited;

"**Price**" means the total amount payable to you set out in the Purchase Order Form;

"**Purchase Order Form**" means our signed form forming part of the PO;

"**Rail JV**" means the unincorporated joint venture known as the "Oakajee Rail Joint Venture" established for purposes that include the design, engineering, construction, commissioning and operation of the rail network, which, as at the date of this General Purchase Order, is comprised of Mitsubishi Development Pty Ltd as a 50% Participating Interest and Crosslands Resources Limited as a 50% Participating Interest;

"**Rail JV Participants**" means at the date of the PO, Mitsubishi Development Pty Ltd and Crosslands Resources Limited;

"**Services**" means the services described in the Purchase Order Form;

"**Taxable Supply**" has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"**Taxes**" means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable;

"**we**", "**us**" and "**OPR**" mean Oakajee Port and Rail Pty Ltd in its capacity as agent for the JV Participants;

"**you**" means the person, company, or corporation referred to in the Purchase Order Form as the "Supplier" and to whom the PO is issued, and where two or more persons are referred to in the Purchase Order Form, then the obligations on their part shall bind and be observed and performed by them jointly and each of them severally;

"**Valid Tax Invoice**" means an invoice provided by you that must include, or be accompanied by, the PO with the PO number and your bank account details for payment by electronic bank transfer.

The words "including" and "include" are a reference to "including, but not limited to"; and

Words importing the singular include the plural (and vice versa).

2. APPLICATION

Except as may be specifically provided in the PO, any terms and conditions contained in or relating to any other documents, including any of your documents, in respect of the Goods and/or Services are of no effect.

3. FORMATION OF THE CONTRACT

3.1 No terms stated by you in accepting or acknowledging the PO will be binding unless our prior express written consent has been given. The PO constitutes an offer to purchase and not an acceptance of any offer to sell Goods or provide Services. In the absence of any written acceptance or acknowledgement of the PO by you, the commencement of any work by you in connection with the PO or the making of any deliveries will be deemed an acceptance of the PO.

4. DELIVERY AND PERFORMANCE

4.1 You must Deliver the Goods and/or Services to the Delivery Point by the Delivery Date.

4.2 If you fail to deliver the Goods and/or perform the Services by the relevant Delivery Date, such failure will constitute a material breach of the PO and we may deduct from payments due to you under the PO and/or immediately terminate the PO.

4.3 Partial delivery and/or performance (including the supply of non-compliant Defective Goods and/or Services) by the relevant Delivery Date constitutes a failure to Deliver and/or perform and GC 4.2 applies, unless we confirm in writing that partial delivery is acceptable.

4.4 If a licence, certificate or consent of any government or other authority is required for the supply of the Goods or performance of the Services, you must obtain such licence, certificate or consent at your expense and produce evidence of it to us on demand.

5. NON-COMPLIANT GOODS AND SERVICES

5.1 You must, at no additional cost to us, ensure that all Goods are packaged and transported in a manner that protects such Goods against damage.

5.2 Notwithstanding that payment has been made to you, we will not be deemed to have accepted the Goods and/or Services unless and until we have had a reasonable opportunity to inspect them and have notified you of our acceptance.

5.3 If any Goods and/or Services (or any part of them) are damaged, defective, do not comply with the manufacturer's specification or otherwise do not comply with the PO ("**Defective Goods**" and/or "**Defective Services**"), we may reject such Defective Goods and/or Defective Services, or accept the Defective Goods and/or Defective Services at a discounted price. Such discount must be appropriate to cover the reduced value to us of the Defective Goods and/or Services and any costs incurred by us arising out of the supply of the Defective Goods and/or Defective Services.

5.4 If we reject any Goods under GC 5.3, you must collect such rejected Goods within 10 days of being notified (or such other time directed by us) and replace such Goods with non-Defective Goods at no cost to us.

5.5 If you fail to replace any rejected Goods in accordance with GC 5.4, we may immediately terminate the PO and you must refund any payments made by us for any Goods rejected by us within 14 days.

6. RISK AND TITLE

6.1 Without prejudice to our rights under GC 5, unless otherwise specified in the PO, ownership of the Goods passes to us on the earlier of Delivery of the Goods or Payment for any of the Goods prior to Delivery.

6.2 Unless otherwise specified in the PO, you are responsible for the care and custody of the Goods until the Goods are Delivered. You must make good at your own cost any loss or damage that may occur to the Goods from any cause whatsoever prior to that Delivery.

6.3 You must adhere to all import, export and trade restrictions that may apply to any element of the Goods and/or Services.

7. CONTRACT PRICE AND PAYMENT

7.1 You are deemed to have satisfied yourself of the correctness and sufficiency of the Price which, except as otherwise provided in the PO covers all your obligations under or in connection with the PO.

7.2 We are only liable to pay for Goods and/or Services specified in the PO at the Price.

7.3 Unless otherwise agreed in writing, upon Delivery, you must provide a Valid Tax Invoice to us, clearly marked with the relevant PO number.

7.4 Subject to you providing a complete Valid Tax Invoice to us, we will make all payments due to you within 30 days from the date of receipt of the complete Valid Tax Invoice.

7.5 If we are required by any law to deduct an amount in respect of Taxes from a payment under the PO, we will pay you the difference between the payment due under the PO to you and the amount deducted.

7.6 We may set-off any amount owing to us from you against any amount owed to you by us. We may separately recover from you any debt owed by you to us arising out of or in connection with the PO.

7.7 Unless otherwise notified by us in writing, all payments made by us to you will be by electronic bank transfer.

7.8 Should any Taxes be levied on, in respect of, or in relation to, the Goods and/or Services, these will be to your account. You will be responsible for payment of those Taxes and will immediately provide us with documentary evidence of payment if payment is made by you on our behalf.

7.9 Except where expressly stated otherwise, all amounts referred to in the PO are exclusive of GST. Where any supply occurs under or in connection with the PO or the Goods and/or Services the party making the supply is entitled to increase the amount payable for the supply by the amount of any applicable GST.

7.10 Where under the PO you are entitled to any adjustment to the Price, and such adjustment is based on the reasonable or actual cost to you of performing any work, any input tax credits available to you, or your representative member, in relation to performing such work will be deemed to reduce the cost of such work.

7.11 Where the amount payable to you for a supply under or in connection with the PO or the Goods and/or Services is based on the actual or reasonable costs incurred by you, the amount which you are entitled to be paid will be reduced by any input tax credits available to you, or your representative member, in respect of such costs.

7.12 A party will not be obliged to pay any amount in respect of GST on a supply to the other party unless and until a tax invoice that complies with the GST Legislation has been issued in respect of that supply. Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to enable or assist the other party to claim input tax credits to the maximum extent possible, or itself claim all input tax credits that might be available to it, in order to reduce the amount recoverable from the other party under the PO.

7.13 You acknowledge and agree that if a legislative requirement requires us to deduct an amount in respect of withholding tax from a payment under the PO such that you would not actually receive on the due date the full amount provided for under the PO, then on the due date:

7.13.1 we must pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipt to you; and

7.13.2 we must pay you an amount equal to the difference between the payment and the amount deducted.

8. INTELLECTUAL PROPERTY RIGHTS

You must do everything necessary to ensure that the use, copying or modifying of the Goods and/or Services by us does not infringe any rights, including Intellectual Property Rights, of another person or entity.

9. WARRANTY

9.1 You warrant that:

9.1.1 the Goods and/or Services will conform to the specifications in the PO and any other specifications, requirements or instructions made known to you;

9.1.2 the Goods will be new, of high quality, fit for purpose, of good materials and workmanship and free from defects or computer viruses;

9.1.3 the Goods are, and at the time that title in the Goods passes to us, will be, free and clear of all liens and encumbrances and with good marketable title;

9.1.4 the Goods and/or Services will comply with all laws, rules or regulations in force at the time of Delivery or performance;

9.1.5 the use, copying or modification of the Goods and/or Services will not infringe any rights, including Intellectual Property Rights, of another person or entity;

9.1.6 in providing the Goods and/or Services, you will:

(a) inform yourself of and comply with all applicable health, safety and environmental laws and regulations, as may be amended from time to time;

(b) comply with any safety, environmental or other OPR policies, guidelines, procedures and requirements provided to you by us; and

9.1.7 you will provide the Goods and/or Services exercising the care, skill and diligence reasonably expected of a competent, professional supplier of goods or services similar to the Goods and/or Services.

9.2 You must ensure that we receive the benefit of all warranties provided by your subcontractors or suppliers.

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- 9.3 Our rights and remedies in the PO are cumulative and are not exclusive of any rights or remedies provided at law or otherwise.
- 9.4 Our acceptance of the Goods and/or Services does not relieve you from any of your warranties, obligations or liabilities under or in connection with this GC 9.
- 10. INDEMNITY AND INSURANCE**
- 10.1 You must indemnify and keep us, our directors, employees, agents and contractors indemnified from and against all losses, claims, liabilities and expenses (including legal and other professional fees and expenses) of whatever nature incurred or suffered by us arising out of or in relation to any damage to property, personal injury or death arising out of or in relation to any Goods and/or Services provided under the PO.
- 10.2 The indemnity provided in GC 10.1 does not apply to the extent that the injury, death, damage, destruction or loss is the result of our negligence or actions.
- 10.3 You must effect and maintain all insurances which a prudent, competent, professional supplier of the Goods and/or Services would effect and maintain, including comprehensive public and products liability insurance, insurance of the Goods, workers compensation insurance, motor vehicle insurance, professional indemnity insurance (if relevant) and any other insurances required by law.
- 11. TERMINATION OR EXPIRY**
- 11.1 We may immediately terminate the PO by written notice to you for convenience or if you breach any obligation under the PO.
- 12. CONFIDENTIALITY**
- 12.1 You must treat all information, data and materials provided by us as confidential and must not disclose it to any third party without our prior written consent or use it for any purpose other than for provision of the Goods and/or Services.
- 12.2 Upon termination of the PO and/or upon our request, you must return or, at our option, destroy all such information and provide evidence of such destruction.
- 13. OPR AS AGENT**
- 13.1 The Port JV Participants and the Rail JV Participants have severally, and not jointly nor jointly and severally, appointed us as their agent to exercise their rights and perform their obligations under the PO.
- 13.2 Notwithstanding GC 13.1, you acknowledge and irrevocably accept that the Rail JV Participants and/or the Port JV Participants (as the case may be) may terminate our appointment as agent for the Rail JV Participants and/or the Port JV Participants (as the case may be) and appoint another agent in our place.
- 13.3 Without limiting GC 13.2, within 20 days of the appointment of a new agent, the JV Participants must advise you of the change of agent.
- 13.4 The rights and obligations of the JV Participants under the PO are several only, and not joint nor joint and several, in proportion to their Participating Interests.
- 14. GENERAL**
- 14.1 You must not assign, novate or subcontract the performance of all or any part of the PO without our prior written consent.
- 14.2 Subject to GC 14.3, all notices must be in writing, addressed to us or you as appropriate, and delivered to the address and/or sent to the facsimile number of the recipient as shown on the PO, or any other address notified in writing by one party to the other and delivered personally or by facsimile transmission.
- 14.3 All Valid Tax Invoices must be delivered to us at the address(es) for the submission of invoices indicated on the PO.
- 14.4 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 14.5 A letter or facsimile is deemed to be received:
- 14.5.1 in the case of a posted letter, 3 days after posting (5 days in the case of a letter sent by airmail); and
- 14.5.2 in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
- 14.6 If any provision in these Conditions is invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions.
- 14.7 To the extent of any inconsistency between these Conditions and the Purchase Order Form, then the order of precedence is:
- 14.7.1 the Purchase Order Form; and
- 14.7.2 the Conditions.
- 14.8 The PO may not be varied except by written Change Order signed by a duly authorised representative of each of the parties.
- 14.9 If we do not exercise a right, remedy or power at any time, this does not mean we cannot exercise it later.
- 14.10 The parties are not entitled to recover any amount representing any kind of indirect or consequential loss or damage including loss of profit, loss of use, loss of contracts, loss of revenue or contribution to head office overheads arising out of or in connection with the PO.
- 14.11 GCs 7.6, 8, 9, 9.4, 12 and 13 will survive any termination or expiry of the PO.
- 14.12 The PO is governed by the laws of Western Australia.
- 14.13 The parties agree to submit to the exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them.
- 14.14 The operation of the *Vienna Convention on Contracts for the International Sale of Goods 1980* and the *Sale of Goods (Vienna Convention) Act 1986 (WA)* is excluded in relation to all and any rights, obligations and liabilities under this PO.
- 14.15 For the avoidance of doubt, unless expressed otherwise the rights and obligations of the parties under or in connection with this Contract are not governed by any of the Incoterms.
- 14.16 The National Code of Practice for the Construction Industry ("**Code**") and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009 ("**Guidelines**"), apply to this project. By agreeing to supply the Goods and/or Services, you will be taken to have read and to agree to comply with the Code and Guidelines.
- 14.17 The Project is subject to the Western Australian Government's Code of Practice for the Building and Construction Industry.